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NO. 55

IN THE

Supreme Court of the United States

October Term, 1962

MARGUERITE LORETTA ALDRICH
Petitioner,

v.

WILLIAM T. ALDRICH, NATALIE ALDRICH, ANGELA ALDRICH, M. S. ALDRICH & ASSOCIATES, INC., ALDRICH-SLICER COMPANY, A Corporation, and JOHN C. WHITE, Executor of the Estate of M. S. Aldrich, Deceased,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

BRIEF FOR RESPONDENTS WILLIAM T. ALDRICH, NATALIE ALDRICH, M. S. ALDRICH & ASSOCIATES, INC., A CORPORATION, AND ALDRICH-SLICER COMPANY, A CORPORATION

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NO. 737

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MARGUERITE LORETTA ALDRICH
Petitioner,

v.

WILLIAM T. ALDRICH, NATALIE ALDRICH, ANGELA ALDRICH, M. S. ALDRICH & ASSOCIATES, INC., ALDRICH-SLICER COMPANY, A Corporation, and JOHN C. WHITE, Executor of the Estate of M. S. Aldrich, Deceased,
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ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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Respondents William T. Aldrich, Natalie Aldrich, M. S. Aldrich & Associates, Inc., and Aldrich-Slicer Company submit their brief in opposition to petitioner's prayer that a writ of certiorari be issued to the Supreme Court of Appeals of West Virginia to review the judgment of that court entered in the above styled case.

OPINIONS DELIVERED IN COURTS BELOW

Opinion of the Circuit Court of Putnam County, West Virginia, entered August 2, 1961, set forth in Appendix A beginning on page 21 of petition heretofore filed herein. Opinion of the Supreme Court of Appeals of West Virginia filed July 6, 1962, set forth in Appendix D beginning on page 25 of said petition and reported as *Aldrich v. Aldrich*, W. Va. , 127 S. E. 2d 385.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

Article IV, Section 1 of the Constitution of the United States provides:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

Title 28, Section 1738, United States Code, provides:

> "The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.
>
> "The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

> "Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

Section 65.08, Florida Statutes, 1941, provides:

> "In every decree of divorce in a suit by the wife, the court shall make such orders touching the maintenance, alimony and suit money for the wife, or any allowance to be made to her, and if any, the security to be given for the same, as from the circumstances of the parties and nature of the case may be fit, equitable and just; but no alimony shall be granted to an adulterous wife."

Chapter 23894, Section 1, Laws of Florida—1947, amended Section 65.08, Florida Statutes, 1941, by adding thereto the following sentence:

> "In any award of permanent alimony the court shall have jurisdiction to order periodic payments or payment in a lump sum."

QUESTIONS PRESENTED

1. Do the provisions of Article IV, Section 1 of the Constitution of the United States, and Title 28, Section 1738, United States Code, require the courts of West Virginia to enforce a void decree of the Circuit Court of Dade County, Florida?

2. Was the decree of the Circuit Court of Dade County, Florida, entered in the divorce suit of Marguerite Loretta Aldrich v. M. S. Aldrich on May 31, 1945, as amended by decree entered on June 5, 1945, void insofar as it attempted

to impose upon the estate of M. S. Aldrich liability for alimony to accrue after his death?

STATEMENT OF THE CASE

These respondents accept petitioner's statement as substantially correct, and adequate for argument of the issues here involved, except for the following inaccuracies:

1. On page 5 of the petition it is stated that, "The Circuit Court of Putnam County held that the decree of the Florida court was invalid and unenforceable in so far as it attempted to impose an obligation to pay alimony on the estate of M. S. Aldrich." The Circuit Court of Putnam County in fact held that the Florida decree was invalid to the extent that it attempted to impose on the estate of M. S. Aldrich liability for alimony *accruing after the death* of M. S. Aldrich.

2. On page 6 of the petition in discussing the ruling of the majority of the Supreme Court of Appeals of West Virginia, petitioner charges the West Virginia Court with reviewing the "merits" of the Florida judgment. In fact the majority of the West Virginia Court confined its examination and consideration of the Florida judgment to a determination of the jurisdiction of the Florida court, under Florida law, to enter the judgment.

ARGUMENT

1. A judgment void in the state of rendition will not be enforced by the courts of another state.

It is well settled that a judgment generally is entitled to receive the same faith and credit in every other state that is accorded to it where rendered. Therefore, if a judgment is valid and conclusive in the state where rendered it will

be enforced in all other states; however, if it is invalid and unenforceable in the state where rendered, the full faith and credit provisions do not prevent its being attacked collaterally in another state. See 50 C.J.S. Judgments, page 473, Section 889, and authorities therein cited.

2. A judgment entered by a court without jurisdiction is void.

It is essential to the rendition of a valid judgment that it be given by a court of competent jurisdiction. A judgment beyond the jurisdiction of the court is null and void. As stated in *Vallely* v. *Northern Fire and Marine Ins Co.*, 254 U. S. 348, 65 L. Ed. 297, 41 S. Ct. 116,

> "Courts are constituted by authority, and they cannot go beyond the power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply void, and this even prior to reversal."

. See also 31 Am. Jur., Judgments, Page 68, Section 406.

3. A judgment is void if it is beyond the powers granted to the court by the law of its organization, even though the court has jurisdiction over the parties and subject matter.

A court may not render a judgment beyond the limits of its authority. For example, a court limited in its jurisdiction with reference to the amount in controversy may have jurisdiction of the parties and of the subject matter, but if it enters judgment in an amount exceeding its jurisdictional power, that part of the judgment in excess of its power is void.

The point just made has long been recognized by this Court, which in *United States* v. *Walker*, 109 U. S. 258,

27 L. Ed. 927, 3 S. Ct. 277, decided in 1883, held that:

> "Although a court may have jurisdiction over the parties and the subject matter, yet if it makes a decree which is not within the powers granted to it by the law of its organization, its decree is void."

In support of such holding the court cited *Windsor* v. *McVeigh*, 93 U. S. 274, 23 L. Ed. 914, decided in 1876, in which Mr. Justice Field stated the law upon the subject as follows:

> "The doctrine invoked by counsel, that when a court has once acquired jurisdiction it has a right to decide every question which arises in the case, and its judgment, however erroneous, cannot be collaterally assailed, is undoubtedly correct as a general proposition; but, like all general propositions, is subject to many qualifications in its application. - - -
>
> "The doctrine stated by counsel is only correct when the court proceeds, after acquiring jurisdiction of the cause, according to established modes governing the class to which the case belongs, and does not transcend, in the extent or character of its judgment, the law which is applicable to it."

The law as thus stated has been followed in State and Federal courts. In *Fishel* v. *Kite*, (1938) 101 F. 2d 685, the United States Court of Appeals for the District of Columbia, citing *United States* v. *Walker*, supra, and *Windsor* v. *McVeigh*, supra, held:

> "A collateral attack is not available except upon the theory that the judgment is void and unless the record reveals that the court had no jurisdiction of the parties or of the subject matter, *or that the judgment rendered was beyond the authority of the court under the law.*" (Emphasis supplied.)

The rule of *Windsor* v. *McVeigh* was followed in *Armstrong* v. *Obucino*, 300 Ill. 140, 133 N. E. 58, and as there announced is quoted with approval in *Illinois National Bank* v. *United States*, (1959), 173 F. Supp. 475, at 492, as follows:

> "'The statement has very frequently been made that, where a court has jurisdiction of the parties and the subject-matter, its decree, however, erroneous, can only be attacked on appeal or error; but the rule is subject to an exception equally well settled—that a decree may be void because the court has exceeded its jurisdiction. . . . Courts are limited in the extent and character of their judgments, and if they transcend their lawful powers their judgments and decrees are void, and may be collaterally impeached, wherever rights claimed under them are brought in question. The doctrine that where a court has once acquired jurisdiction it has a right to decide every question which arises in the cause and its judgment or decree, however erroneous, cannot be collaterally assailed, is only correct, when the court proceeds according to the established modes governing the class to which the case belongs, and does not transcend in the extent and character of its judgment or decree the law or statute which is applicable to it'"

It is interesting to note that the last sentence of the foregoing quotation is virtually identical to the words of Mr. Justice Field in *Windsor* v. *McVeigh*, supra, decided 83 years earlier.

See also 31 Am. Jur., Judgments, page 70, Section 407.

4. Under Florida law, a decree for payment of alimony to continue after the death of the husband is, in the absence of express agreement between the parties, beyond the power of the court, and is therefore void.

In *Allen* v. *Allen*, 111 Fla. 733, 150 So. 237, the court said, on page 238:

> "As a general rule the obligation to pay alimony dies with the person, but agreements of the husband to bind his representatives to do this have been upheld, and there is no prohibition against them in this state."

The *Allen* case was decided in 1933. In 1953 the Florida court affirmed the rule enunciated in *Allen* when it held, in *Underwood* v. *Underwood*, ... Fla. ....., 64 So. 2d 281, at 288:

> "By its very nature, alimony is limited to the lifetime of the husband."

The case of *Johnson* v. *Every*, ... Fla. ....., 93 So. 2d 390, decided in 1957, involved interpretation of the terms of a separation agreement which was subsequently incorporated in a divorce decree. Excerpts from the majority opinion in the *Johnson* case are quoted on pages 13 and 14 of petitioner's brief in support of her argument that the Florida court in the case at bar did have the power to decree payment of alimony after the death of M. S. Aldrich. If considered out of context some of the language used by the Florida court would seem to support petitioner's argument; however, the effect of the case as a whole is to support the position of the respondents.

In the *Johnson* case the wife sued the executor of her former husband's estate for installment payments which had accrued after his death. The decree, embodying the terms of a property settlement agreement made two years previously, provided that monthly alimony payments " - - -

shall cease, upon the death of the plaintiff or upon her remarriage, - - -." The issue upon which the decision turned was the interpretation of the quoted words. The four-judge majority held that the words indicated an intent on the part of the lower court to charge the husband's estate with alimony payments if he predeceased his ex-wife, and that since such charge was based upon a prior contract between the parties it would be enforced. In the course of the opinion the Court said:

> "- - - In the absence of an express contract or a provision in a decree *such as the one before us*, a divorced husband's liability for alimony terminates with his death. On the other hand where the decree or property settlement agreement expressly provides for the continuation of the payments 'until death of the wife' then the husband's estate remains liable - - -." (Emphasis supplied.)

While the court used the disjunctive "or" in referring to an "express contract" or a "decree," it was the element of agreement between the parties which determined the majority decision. The decree which was "the one before" the court was based on agreement between the parties; therefore the case holds no more than this: If there is an agreement, it may be expressed in a contract, in the decree, or in both; but if there is no agreement, a decree calling for payment of alimony after the death of the husband is not valid. Any other conclusion cannot be reconciled with the decision in *Allen* v. *Allen*, supra, quoted with approval in the majority opinion in *Johnson* v. *Every*. The accurate statement of the holding in *Johnson* is, we submit, found in Point 2 of the Syllabus, as follows:

> "Where under *property settlement agreement and divorce decree* it was provided that weekly payments

> to wife were to be terminated only by death of wife or her remarriage, husband's liability for such payments did not terminate on his death and his estate was liable for them." (Emphasis supplied.)

A minority of three judges in *Johnson* v. *Every* dissented from the majority opinion, on the ground that the wording of the separation agreement and divorce decree did not indicate beyond doubt that it was the intention of the parties to bind the husband's estate after his death. In the case at bar we are not interested in the matter of interpretation since our issue concerns the power, rather than the intent, of the Florida divorce court. However, part of the dissenting opinion throws considerable light on our issue, and we quote from it as follows:

> "An examination of the opinions in the two Florida cases which it is insisted are in point, i.e., *Underwood* v. *Underwood*, - - - and *Allen* v. *Allen*, - - - discloses that in each of said cases there was a clear, unambiguous covenant or agreement on the part of the husband to bind his personal representative after his death. It is our conclusion that the general rule to the effect that 'the obligation to pay alimony dies with the person' should not give way in a case of this type which discloses no independent equities in favor of the erstwhile wife, unless by the terms and covenants of the separation agreement the husband, by express language which admits of no doubt, makes his obligation binding upon his estate.
>
> "We do not decide, since the question is not presented, whether an award of this type of 'pure' alimony could be made by the court to extend beyond the lifetime of the husband, in the absence of an agreement of the parties to that effect. There is no statute in this state so providing; and it has been

> said that 'generally such power is considered as not existent, in the absence of any statute or agreement between the parties.' See the statement of the annotator in 39 A. L. R. 2d at page 1409, and cases cited."

The case of *Deigaard* v. *Deigaard*, Fla. App. 1959, 114 So. 2d 516, involved a divorce suit in which a decree of the trial chancellor provided for monthly payments of alimony and a lump sum payment of $5,000 in lieu of post-demise alimony to be paid by the estate of the husband. The District Court of Appeal of Florida, Third District, citing *Allen* v. *Allen*, supra, *Underwood* v. *Underwood*, supra, and *Johnson* v. *Every*, supra, held invalid that portion of the decree which provided for the charge of $5,000 against the husband's estate, and in the opinion said:

> "In addition, a divorced husband's liability for alimony generally terminates with his death. There was no expressed contract or agreement between the parties that alimony should continue beyond the life of the husband, and in the absence of statutory authority, we conclude that *the decree in this respect is without legal basis.*" (Emphasis supplied.)

Thus it is abundantly clear that in Florida, as elsewhere, the obligation to pay alimony dies with the husband unless there is (a) a specific agreement to the contrary between the parties, embodied in a separation contract and or a divorce decree, or (b) a statute authorizing continuation of payments after the death of the husband. No separation contract is involved in the case at bar, and the decree of the Circuit Court of Dade County is, in its own words, for "permanent alimony," and not for an amount agreed upon by the parties. Examination of the Florida statute in effect at the time the decree of the Circuit Court of Dade County was entered in the case at bar discloses no authorization

for the entry of that portion of the decree which respondents contend is void. This is also the statute which was before the Florida courts at the times of decision of all of the Florida cases hereinbefore cited, except for the 1947 amendment, and we submit that such amendment has no effect upon the matter under consideration.

CONCLUSION

Petitioner seeks a review by this Court on the ground that the questions raised by her petition are of "great general and public interest." Such would indeed be the case if the courts of West Virginia had refused in any manner to accord to a court of a sister state the full faith and credit guaranteed by the Constitution and implemented by the statutes of the United States. However, in evaluating the validity of the Florida judgment which petitioner sought to enforce in West Virginia, the courts of the latter State have followed a rule of law announced by this Court many years ago, and since reaffirmed in numerous cases by this and other courts. The departure from, rather than the observance of, such rule would do violence to established law and precedent.

Whether or not the West Virginia courts have correctly interpreted and applied Florida law in determining the validity of the Florida judgment is, we submit, not a question of such general interest or importance as to command the attention and review of the Supreme Court of the United States. However, the Florida decisions relied upon by the Supreme Court of Appeals of West Virginia amply

justify and sustain its interpretation of Florida law, and we find no Florida decisions to the contrary.

Respectfully submitted,

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